

28

CERTIFIED 1
TRANSCRIPT

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 08-CV-5338 (LAK)

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AYAL ROSENTHAL,

Plaintiff,

- against -

NEW YORK UNIVERSITY, NEW YORK UNIVERSITY
LEONARD N. STERN SCHOOL OF BUSINESS, and
THOMAS F. COOLEY, RICHARD R. WEST, Dean
of the LEONARD N. STERN SCHOOL OF
BUSINESS,

Defendants.

- - - - - x
January 12, 2010
1:28 p.m.

DEPOSITION of TIM COLVEN, a non-party
Witness herein, taken by the Plaintiff,
pursuant to Notice, held at 11 Broadway,
New York, New York, before Kim Auslander,
a Notary Public of the State of New York.

1 T. COLVEN

2 A. That was either an election by
3 the members -- I think it was an election
4 by the members of the committee.

5 Q. When did you become the chair
6 of the judiciary committee?

7 A. When the preceding chair left,
8 which would have been when she graduated,
9 so started end of my first, beginning of my
10 second year.

11 Q. Sometime between May and
12 September of 2005 or 2006?

13 MS. KILSON: Off the record.

14 (Discussion held off the record.)

15 (Record read back.)

16 A. It's probably April, May, as
17 opposed to May, September.

18 Q. That would be 2006?

19 A. 2006.

20 Q. Who was the vice chair of the
21 judiciary committee when you were the
22 chair?

23 A. Amy Margolis.

24 Q. During the time that you were
25 the chair of the judiciary committee, other

1 T. COLVEN

2 A. Okay.

3 Q. Then under B it says, Upon
4 receipt of a complaint, the chair shall
5 select an investigative committee comprised
6 of two student committee members within two
7 academic days.

8 Do you recall if you followed
9 that procedural directive?

10 MS. KILSON: Objection, form.
11 Are we talking about in this
12 case?

13 MR. HERNSTADT: Yes.

14 Q. In the case of Ayal Rosenthal.

15 A. I guess what I would say is --
16 just say the question again. I'm sorry.

17 Q. I am asking if you recall
18 whether you followed that procedural
19 directive in the case of Ayal Rosenthal.

20 A. I would say I didn't do the
21 case of Ayal Rosenthal, so I would say I
22 didn't follow that or any other directive
23 really.

24 Q. Did you participate in the
25 Rosenthal case at all?

1 T. COLVEN

2 Q. Do you know who he is?

3 A. The person in the case, but I
4 don't think I have ever talked to him.

5 Q. Did you know who he was before
6 this case came up?

7 A. I don't think even today I
8 would recognize him if I saw him on the
9 street.

10 Q. Is there any reason why you
11 didn't inform Ayal Rosenthal of the
12 complaint against him?

13 A. Well, it hadn't gotten far
14 enough along that I informed anybody about
15 anything.

16 Q. Was it normal that it would
17 take so long to look into a complaint
18 against a student?

19 MS. KILSON: Objection, form.

20 A. A typical case takes less long
21 than this case took, yes.

22 Q. Referring you again to
23 Exhibit 7, there is a requirement of an
24 investigation and then an investigative
25 report.

1 T. COLVEN

2 Do you know if there was ever
3 an investigation or an investigative report
4 done in connection with the Ayal Rosenthal
5 case?

6 A. I don't know. It would have
7 been after my time, but I don't know.

8 Q. Do you know why the deadline
9 wasn't followed in the case of Ayal
10 Rosenthal?

11 MS. KILSON: Objection, form.

12 Q. The deadline I am referring to
13 is on page 7.

14 A. I don't think the deadline
15 applied. I don't think the case had been
16 taken in by the Judiciary Committee. I
17 don't know at what point the Judiciary
18 formally took the case.

19 At that point that would have
20 been the following year. I have no idea
21 whether it was along the timeline it was
22 supposed to be or not.

23 Q. Looking at page 7 of 12 of
24 Exhibit 7 under procedure, which is section
25 four, looking at B it says, Upon receipt of

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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Index No. 08-CV-5338 (LAK)

**CERTIFIED
TRANSCRIPT**

5 - - - - -x
6 AYAL ROSENTHAL,

7 Plaintiff,

8 -against-

9 NEW YORK UNIVERSITY, NEW YORK UNIVERSITY
10 LEONARD N. Stern School OF BUSINESS and
11 THOMAS F. COOLEY, RICHARD R. WEST, DEAN of
the LEONARD N. STERN SCHOOL of BUSINESS,

12 Defendants.
13 - - - - -x

14 11 Broadway
15 New York, New York
16 December 18, 2009
17 10:10 a.m.

18 DEPOSITION of MELCHIOR OCHOA, taken
19 by the Plaintiff, in the above-entitled action,
20 held at the above time and place, pursuant
21 to Notice, taken before Jo-Anne Bodkin, a
22 Notary Public within and for the State of
23 New York.
24
25

Melchior Ochoa

46

as an unbiased and fair chair, looking at both sides of the matter, I had an obligation to follow up on that reference.

Q How did you become the chair of the judiciary committee?

A I was a leader in multiple clubs, so -- I'm fuzzy on the selection process for those clubs --

Q Right.

A -- so I don't recall.

Q Do you remember if you were selected by Mr. Colvin or by the outgoing members of the judiciary committee?

A I believe it was a selection by the outgoing members.

Q Do you recall if there was an election of MBA students that led to your being named the chair of the judiciary committee?

A What sort of election?

Q Any election. Like some kind of election by the MBA students.

A No, not the general MBA student body.

Melchior Ochoa

47

Q What are the SCORP elections?

MS. KILSON: Objection.

Form.

A The SCORP elections are elections for officers in the SUNY government.

Q And were you elected chair of the judiciary committee in the SCORP elections?

A There was no position at that time elected on the ballot.

Q Do you know if Dean Fraser selected you as chair of the judiciary committee?

A He did not.

Q You know that he did not?

A Yes.

Q You chuckle when you say that. Is that amusing for some reason?

A It is amusing, because I would not allow that personally.

Q Is Dean Fraser the faculty -- withdrawn.

Is Dean Fraser the Stern School

Melchior Ochoa

116

1
2 A Okay.

3 Q My question is: Do you know
4 whether the Office of Legal Counsel
5 opined --

6 A No, I do not.

7 Q -- as to matter of jurisdiction?

8 A I do not know.

9 Q Was an investigative committee
10 ever formed in connection with the Rosenthal
11 matter?

12 A No.

13 Q Was a report from the
14 investigative committee created within seven
15 academic days after being formed?

16 A Where are you referencing?

17 Q Well, 6C: The accused will
18 receive a copy of the investigative
19 committee's written report no later than
20 three academic days prior to the hearing.

21 A So he received a written report
22 no later than three academic days prior to
23 the hearing.

24 Q Right.

25 A Yes.

Melchior Ochoa

120

improper.

MS. KILSON: It is beyond
pointless.

Q You can answer.

MS. KILSON: It is a waste
of time.

A Again, because he pleaded
guilty in a court of law and that was what
was within the complaint, and the committee
is for fact finding and recommending only to
determine the -- what the complaint consists
of, this case was pushed to a hearing.

Q Okay.

So my question was a simpler
question.

No investigative committee was
formed, correct, in the case of Mr. Rosenthal?

A No.

Q And that was no, no committee
was formed?

A No committee was needed to be
formed for this case.

Q And, therefore, none was,
correct?

Melchior Ochoa

121

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2 A Yes.

3 Q And do you see where it says
4 that the investigative committee shall
5 submit its written report within seven
6 academic days?

7 A Yes.

8 Q Was that done in the case of
9 Mr. Rosenthal?

10 MS. KILSON: I'll

11 stipulate that because there
12 was no committee, there was no
13 report.

14 Q Is that correct?

15 A Correct. Since there was no
16 committee, there was no report.

17 Q And it says that the role of
18 the investigative committee is that of fact
19 finding and recommending further action is
20 necessary.

21 A That is what is written.

22 Q And is it your testimony that
23 because Mr. Rosenthal pleaded guilty to a
24 felony, no additional fact finding other
25 than that particular fact was necessary in

Melchior Ochoa

123

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2 has a right to be accompanied by counsel or
3 an advisor.

4 Do you see that?

5 A Yes.

6 Q Was Mr. Rosenthal permitted to
7 be accompanied by counsel at the hearing
8 that was conducted in September 2007?

9 A So I believe this was an error
10 on my part, because I don't know if this is
11 in the polies and procedures.

12 Q Okay.

13 I mean, my question is simply:
14 Was he permitted to have counsel at the
15 hearing?

16 A According to the policies and
17 procedures on the day of the hearing, it
18 states that he's not allowed to bring in
19 legal counsel.

20 Q Okay. Why don't we get to that
21 actually after my question.

22 My question was: Was he
23 permitted to have counsel at the hearing?

24 A According to the polies and
25 procedures, he was not permitted to counsel.

Melchior Ochoa

124

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2 Q Did he have counsel at the
3 hearing?

4 A No.

5 Q And was he prevented from
6 having counsel at the hearing by the
7 judiciary committee?

8 A Yes. By the policies and
9 procedures. The policies and procedures state
10 that he cannot bring in counsel.

11 Q Where does it say that?

12 A It can it say that he, I believe -- so
13 6G --

14 Q Right.

15 A -- I believe it is, he may
16 consult with an advisor of his or her own
17 choosing.

18 Q And you understand that to mean
19 that he is not permitted to have counsel at
20 the hearing?

21 A Right.

22 MR. HERNSTADT: Why don't
23 we take a short break.

24 (Whereupon, a luncheon
25 recess was taken.)

Melchior Ochoa

139

rules.

A Can you just refer to the exhibit?

Q Sure. Exhibit 7, these rules in Plaintiff's Exhibit 7, the polies and procedures, the student disciplinary rules of the Stern School.

Do you recall if --

A I don't remember if they were printed out for everybody there.

Q Do you recall if the Stern School honor code, a copy of the honor code was available?

A I don't remember if they were printed out for everyone, no.

Q Do you recall if the NYU disciplinary rules were available during the deliberations?

A Because we were following the policies and procedures under this --

MS. KILSON: Referring to Exhibit 7.

A -- Exhibit 7, and the judiciary committee in its deliberations decided that

Melchior Ochoa

140

1 the jurisdiction falls within this and this
2 alone --

3
4 Q Referring to Exhibit 7?

5 A Exhibit 7.

6 -- and that was the judiciary
7 committee's decision, we were not following
8 the NYU policies, the larger NYU policies.

9 This was an independent use of
10 these policies and procedures since we are
11 directed by these as the judiciary
12 committee.

13 Q And "these" being again --

14 A Exhibit 7 --

15 Q -- Exhibit 7?

16 A -- the polies and procedures
17 for the MBA judiciary committee that we were
18 following.

19 Q I take it that means that a
20 copy of the NYU disciplinary rules were not
21 used during the deliberations?

22 A I don't know. I can't assume
23 that. But I know that this is what we were
24 following, Exhibit 7, the polies and
25 procedures. We felt that this was our

Melchior Ochoa

141

1 jurisdiction. And because we were a
2 committee abiding by these and created from
3 these, this is what we were using as our
4 policies and procedures, and that's --
5 that's how we proceeded.
6

7 We did not refer to the larger
8 NYU rules or procedures or anything like
9 that.

10 Q Okay.

11 And "this" and "these" in
12 you're your previous answer --

13 A Exhibit 7, the policies and
14 procedures, the honor code and code of
15 conduct for the Stern School as they pertain
16 to the MBA for graduate judiciary committee.

17 Q And at the conclusion of
18 deliberations, what happened?

19 A A vote, seven/zero, stating
20 that the things that I laid out in the
21 summary, that this was the jurisdiction of
22 the graduate judiciary committee or MBA
23 judiciary committee at the time, that we
24 were following this and nothing else,
25 provided by the Exhibit 7, nothing else

Melchior Ochoa

148

jurisdiction as it relates to the judiciary committee's ability to hear and rule on this matter.

A Yes.

Q Can you state as concisely as possible what the question of jurisdiction was?

MS. KILSON: Objection.

Form.

Q You can answer.

A So the question of jurisdiction was what I stated here in the May 20th document, as I alone was trying to figure out where jurisdiction resides as I was going through these multiple documents. And so it was more of an exercise of me getting up to speed on the due process.

And in that May 20th document, the due process section, it was much more of an appendix of these are the things that I am finding. But ultimately it's the decision of the judiciary committee how jurisdiction is dealt with. And that's what I wanted to leave open ended in the May 20th

Melchior Ochoa

149

document.

Q Did the question of jurisdiction include a question of whether Stern School or NYU rules applied?

MS. KILSON: Objection.

Form.

A Yes.

Q And then looking at the second page, the first full paragraph that begins "student discipline," do you see that?

It says: Student discipline is delegated by the faculty to the judiciary committee. The question of due process that Mr. Rosenthal argues does not fall within the NYU disciplinary procedures and/or --

MS. KILSON: NYU student disciplinary procedures.

Q -- NYU student disciplinary procedures and/or the statement of policy on student conduct --

A Yes.

Q -- at NYU -- at New York University.

A Yes, I see that.

Melchior Ochoa

150

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2 Q Due process is instead covered
3 by the judiciary committee's polies and
4 procedures.

5 A Yes.

6 Q So is this your conclusion that
7 the disciplinary rules set forth in
8 Exhibit 7 apply as opposed to any other
9 rules?

10 MS. KILSON: Objection.

11 Form.

12 A It was the decision of the
13 committee by a seven/zero unanimous vote
14 that the judiciary committee holds
15 jurisdiction over any other document, such
16 as the NYU student disciplinary procedures
17 or the statement of policies on student
18 conduct at New York University, that the
19 judiciary committee alone holds
20 jurisdiction, and that any due processes
21 afforded to Mr. Rosenthal comes from these
22 policies and procedures.

23 Q And not any policies and
24 procedures under NYU rules?

25 A We were an independent body

Melchior Ochoa

151

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2 that we had jurisdiction, and we wanted to
3 try this case based on our local set of,
4 quote/unquote, laws.

5 Q And this was a decision that
6 was contemplated and voted on by all seven
7 members of the hearing panel?

8 A It was contemplated by
9 extensive discussion and it was voted on.
10 And I made sure that it was voted on because
11 I did not want to make that decision alone
12 or push anyone in that direction.

13 And so the body of his peers
14 unanimously voted that this falls within our
15 local policies and procedures.

16 Q Let me ask you to take a look
17 at what has previously been marked as
18 Exhibit 1, Plaintiff's Exhibit 1.

19 MS. KILSON: Hold on a
20 minute.

21 Q These are pages taken from the
22 NYU university policies and procedures,
23 Pages 224 to 231.

24 A Yes.

25 Q And I would like you to look at